

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

|                           |                |                      |
|---------------------------|----------------|----------------------|
| -----X                    | <b>Docket#</b> |                      |
| UNITED STATES OF AMERICA, | :              | 10-cr-594 (ERK) (JO) |
|                           | :              |                      |
| - versus -                | :              | U.S. Courthouse      |
|                           | :              | Brooklyn, New York   |
| JOSEPH YANNAI,            | :              |                      |
| Defendant                 | :              | August 11, 2010      |
| -----X                    |                |                      |

TRANSCRIPT OF CRIMINAL CAUSE FOR DETENTION HEARING  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1 THE COURT: Yes.

2 MR. SPECTOR: -- is that some are abroad, so  
3 there's complications with that.

4 THE COURT: Has any one of those identified  
5 victims expressed a desire to be heard on the issue of  
6 release?

7 MR. SPECTOR: None of them have.

8 THE COURT: Okay. All right. A couple of  
9 preliminary observations. First, I understand the  
10 argument that the government -- from the government's  
11 perspective the risk of flight encompasses more than just  
12 suicide and frankly, perhaps primarily something other  
13 than suicide and I agree that there is a strong incentive  
14 for Mr. Yannai to flee and I believe that given the  
15 opportunity he might well act on that motivation and make  
16 an attempt to flee.

17 I think, however, under these circumstances  
18 that that risk can be ameliorated with conditions short  
19 of detention and I will discuss those in a moment. The  
20 risk of suicide is a risk that falls within the risk of  
21 flight only because it's a risk of non-appearance and so  
22 I do think that if there are no other conditions that can  
23 adequately guard against the risk of suicide, that  
24 detention is an absolutely appropriate response to that  
25 risk.

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1           If I were convinced that by the sufficient  
2 standard that Mr. Yannai did intend to kill himself  
3 rather than face jail, I would order detention because I  
4 don't think that the kind of bail conditions that have  
5 been proposed or frankly any that I can think of would  
6 suffice to guard against that risk particularly in light  
7 of the testimony today about how the defendant's wife was  
8 caught by surprise and the differences between the two  
9 accounts I have heard about how it was attempted and the  
10 planning. And in that regard, I will say that I have  
11 some strong reservations about the completeness and  
12 accuracy of the testimony I heard from Mr. Yannai on that  
13 score.

14           I am not going to order detention and the  
15 reason is that for me the one risk that could not be  
16 guarded against adequately through conditions short of  
17 detention would be the risk of suicide. My finding based  
18 upon what I have heard today is that Mr. Yannai did  
19 attempt suicide. He attempted suicide precisely because  
20 of the pendency of the federal charges and because of his  
21 view that he would be convicted and sentenced to  
22 significant jail time. And that he was unwilling to face  
23 that possibility rather than kill himself.

24           The part of Mr. Yannai's testimony that I found  
25 persuasive and truthful was his account of his

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1 conversation with his wife and the difference that it  
2 made to him. Now I am at best guessing. I hope I am  
3 right but my view is that for reasons that we might agree  
4 with or not as sufficient, Mr. Yannai has made the  
5 decision.

6 I have a very strong reservation about that  
7 only because I think that the best any of us can say now  
8 or the most any of us can say now is that he does not now  
9 intend to kill himself rather than face jail.

10 I think there have been -- there's evidence  
11 here to suggest questionable judgment calls in the past  
12 including the recent past and I don't know if that  
13 intention will change. I hope it won't. But I think  
14 it's the government's burden to convince me that there's  
15 a strong risk that it will. And I don't think you have  
16 met that burden. So I will set conditions of release.

17 The bail package that has been proposed  
18 including the defendant's home is not sufficient. I  
19 think that is insufficient to provide an incentive for  
20 the defendant to return to court if he believes as I  
21 think he may well believe at this point, that there's a  
22 significant risk that he will be convicted and the home  
23 will be forfeited.

24 I will set conditions of bail equivalent to  
25 what's been proposed, \$500,000 bond secured by property

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1 THE COURT: I see.

2 PRETRIAL SERVICES OFFICER: -- perhaps if  
3 someone working  
4 or --

5 THE COURT: All right. I will defer to  
6 pretrial as to whether GPS or electronic monitoring is  
7 preferable. I will make it a condition of release that  
8 the defendant gain evaluation and if necessary treatment  
9 for mental health problems, that he have no contact with  
10 any identified or prospective witness, other than through  
11 counsel. And not seek to hire any further au pairs. And  
12 that he refrain from using the internet in any means,  
13 whether through any device in the home or provided by  
14 anyone else.

15 I am open to suggestions of other conditions  
16 but those are the minimum that I would require.

17 MS. VON DORNUM: Your Honor, as to the other  
18 property, I would ask that the defendant be released  
19 today on the signature of his wife and if you wish, the  
20 posting of the home -- her home and that we have a week  
21 to obtain the other property. We were not able to obtain  
22 another property with Mr. Yannai incarcerated.

23 THE COURT: Uh-huh.

24 MS. VON DORNUM: I believe if he were released,  
25 we would be able to obtain additional property. So I

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1 would ask for a week's time to do that and if you wished  
2 to have their home to secure it in the meantime, we are  
3 certainly prepared to do that.

4 THE COURT: I am not willing to do that. I  
5 think there's a really strong risk of flight here. And I  
6 think that Mr. Yannai has the means to flee. And I do  
7 not intend for him to be released until the conditions I  
8 have set have been satisfied. So that request is denied.

9 In terms of the time limit, because I don't  
10 intend to release him before the conditions are  
11 satisfied --

12 MS. VON DORNUM: Right.

13 THE COURT: -- I am not going to put any  
14 artificial time limit on satisfying the conditions.

15 MR. SPECTOR: May I be heard, Judge, just on a  
16 couple of minor points on the conditions?

17 THE COURT: Yes, of course.

18 MR. SPECTOR: With respect to the witnesses, I  
19 think the easiest and simplest way to do this is that the  
20 defendant is to have no contact with any potential  
21 witnesses and that includes anyone who previously worked  
22 for him.

23 THE COURT: Fair enough.

24 MS. VON DORNUM: Other than through counsel, I  
25 presume.

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1 THE COURT: Yes.

2 MR. SPECTOR: Second, just so we're clear that  
3 the conditions of the bond will only be satisfied when  
4 the satisfactions of judgment for all property is posted  
5 in the appropriate courthouses; is that correct,  
6 your Honor?

7 THE COURT: As opposed to when somebody puts  
8 the property on the bond?

9 MR. SPECTOR: Yes, I should have said  
10 confession of judgment.

11 THE COURT: Confession of judgment. I think  
12 given what -- I just want you to be able to listen. I  
13 think given what you have said, Ms. Von Dornum, about how  
14 long it is going to take to secure a property, I think it  
15 -- there's not a whole lot of difference. Tell me if you  
16 disagree. But that once you find the adequate property  
17 you can pretty quickly get the confession of judgment  
18 filed, as well.

19 MS. VON DORNUM: If it's in New York, that's  
20 true. If it's in another state, that's not necessarily  
21 true.

22 THE COURT: All right. I am going to --

23 MS. VON DORNUM: So if we can wait until we  
24 actually have a property to post to decide which --

25 THE COURT: Well, I --

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1 MS. VON DORNUM: -- of the ways to go, I would  
2 appreciate it.

3 THE COURT: I would say confession of judgment  
4 has to be filed and if you come up with a property  
5 outside of New York State, you know, you can persuade  
6 whether it's me or whoever is on duty at the time that  
7 there's reason to relax that condition. Of course you're  
8 free to make that argument.

9 MS. VON DORNUM: Yes.

10 MR. SPECTOR: As a final matter, I just want to  
11 make sure the record's clear so that the defendant  
12 understands that if he is going to leave his home for  
13 attorney visits or non-emergency medical visits, he must  
14 notify pretrial in advance.

15 THE COURT: Yes, of course. Okay. Anything  
16 else?

17 MR. SPECTOR: Not from the government.

18 MS. VON DORNUM: No, your Honor. Thank you.

19 THE COURT: Okay. Thank you all. Now just so  
20 the record is clear about what I am doing here, I am  
21 completing a bond form and I will -- what I propose to do  
22 is have Mr. Yannai be warned and agreed to them -- oh, I  
23 am sorry, go ahead.

24 MR. SPECTOR: Your Honor, just -- I am not sure  
25 if we specifically addressed travel because he will be



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1 THE COURT: A surety -- yes.

2 MS. VON DORNUM: Okay.

3 THE COURT: No, in addition to the wife. I  
4 didn't actually contemplate Mr. Yannai's wife signing the  
5 bond because regardless of whether she signs, I want a  
6 surety --

7 MS. VON DORNUM: Okay.

8 THE COURT: -- who is someone else.

9 MS. VON DORNUM: One surety who is not his  
10 wife.

11 THE COURT: Yes.

12 MR. SPECTOR: Judge, actually now that you  
13 raise it, I would ask that both the wife and another  
14 surety sign. I think that would provide additional moral  
15 suasion particularly given the testimony that the Court  
16 has (inaudible).

17 THE COURT: Any objection?

18 MS. VON DORNUM: My only objection is that the  
19 prosecutor maintained throughout the bulk of his argument  
20 that the wife did not provide moral suasion and now when  
21 you conclude to the contrary now he wants her on the  
22 bond.

23 THE COURT: Yes.

24 MS. VON DORNUM: I was offering her as a  
25 suretor but it just seems to me he can't --

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1 THE COURT: I don't quite agree with that but I  
2 also think that frankly in my own mind I had settled on  
3 somebody else with property as being adequate and so it  
4 would be inconsistent with the Bail Reform Act to require  
5 the wife's signature in addition.

6 MR. SPECTOR: Judge, just a clarification I  
7 guess I may have missed it.

8  
9 THE COURT: Uh-huh.

10 MR. SPECTOR: The additional surety is to  
11 provide property that has equity of --

12 THE COURT: Yes.

13 MR. SPECTOR: -- \$500,000.

14 THE COURT: Yes.

15 MR. SPECTOR: Okay.

16 THE COURT: Okay. Mr. Yannai, do you  
17 understand all of the conditions on which I would order  
18 your release?

19 THE DEFENDANT: I do, sir, and take it serious.

20 THE COURT: Okay. Are you willing to abide by  
21 all of those conditions?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you have any further questions  
24 about them? And I want to be clear, if you have  
25 questions don't worry about my reaction to them. It's